

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 31, 2005

**SENATE BILL**

**No. 419**

**Introduced by Senator Simitian**

February 17, 2005

---

An act to add Chapter 6.95.1 (commencing with Section 25546) to Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 419, as amended, Simitian. Ultrahazardous materials: transportation: railroad tank cars.

~~Existing~~

(1) *Existing* law prohibits any person from transporting hazardous waste in this state unless the person holds a valid registration issued by the Department of Toxic Substances Control. A violation of the laws regulating hazardous waste is a crime. Existing law requires a railroad corporation transporting hazardous materials to submit to the Public Utilities Commission, a system map containing information, as specified, and to the Office of Emergency Services a copy of a publication that identifies emergency handling guidelines for surface transportation of hazardous material.

Existing law requires, in the event of a release or threatened release of hazardous material from a railcar, a railroad corporation to provide *information* to the emergency response agency, ~~information~~, as specified. Existing law requires the Public Utilities Commission to submit to the Legislature a report on railroad line sites that it finds to be hazardous with information, as specified.

Existing law requires businesses that handle hazardous materials to maintain an inventory of hazardous materials and to prepare a

business plan relating to the handling and the response to a release or threatened release of hazardous materials.

This bill would require the Office of Emergency Services to adopt regulations prohibiting a person from transporting ultrahazardous material, as defined, on the highways of this state, or delivering to a railroad, vehicle transport facility, or vessel, ultrahazardous material for transport, if that ultrahazardous material entered the state, or is being transported from the state, in a pressurized railroad tank car manufactured before January 1, 1989, except as specified. The bill would prohibit the transportation of ultrahazardous material above certain threshold quantities, as specified, by rail, through an urban exclusion corridor, as defined, unless permitted by the office. The bill would require the office to provide a copy of a permit authorizing the transportation of ultrahazardous material, by rail, through an urban exclusion corridor to the unified program agency or the first responder having jurisdiction over areas through which the ultrahazardous material would pass within 24 hours of issuing the permit.

The bill would require the regulations *issued by the office* to be consistent with the federal Hazardous Materials Transportation Authorization Act of 1994, except as specified.

*Because a violation of this transportation prohibition would be a crime, the bill would impose a state-mandated local program by creating new crimes.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 6.95.1 (commencing with Section  
2 25546) is added to Division 20 of the Health and Safety Code, to  
3 read:

1 CHAPTER 6.95.1. TRANSPORTATION OF ULTRAHAZARDOUS  
2 MATERIALS

3  
4 25546. The Legislature finds and declares all of the  
5 following:

6 (a) The federal government has not acted to prevent the  
7 terrorist threat resulting from the transportation of dangerous  
8 quantities of ultrahazardous materials through highly populated  
9 urban corridors.

10 (b) Today, there are no federal laws requiring truckers or  
11 railroad operators to reroute ultrahazardous materials around  
12 major cities, and local law enforcement officials do not always  
13 know when such a shipment is scheduled to pass through their  
14 jurisdiction.

15 (c) A terrorist attack on a shipment of, or an accidental leak of,  
16 poisonous gas inhalants in a major urban area in the state could  
17 result in tens of thousands of deaths and economic damage in the  
18 billions of dollars.

19 (d) Shippers of ultrahazardous materials do not need to ship  
20 large quantities of these materials through heavily populated  
21 areas in order to ship these materials to their destination, and  
22 alternative routes or shipments in smaller, better designed  
23 containers could significantly decrease the risk posed by terrorist  
24 attack or accident.

25 (e) Requiring special permits and special containers to ship  
26 ultrahazardous materials through an urban corridor causes no  
27 significant impact on interstate commerce.

28 (f) The citizens of the state should have a reasonable  
29 expectation that hazardous materials are being shipped in the  
30 safest manner possible and that local first responders are aware  
31 of these shipments in advance.

32 (g) One-half of the nation's approximately 60,000 chemical  
33 tank cars do not meet industry safety standards as of 2004.

34 (h) Puncture resistant tank cars are available today to the  
35 railroad industry and their use would greatly enhance security  
36 and public safety.

37 (i) In March of 2005, in Salt Lake City, Utah, a railcar leaking  
38 toxic chemicals sent plumes of gas into the air, forcing the  
39 evacuation of more than 6,000 people. Fifteen hours after the  
40 discovery of the leak, officials still were not certain of the

1 contents of the leaking tanker. Officials could not determine from  
2 the owner of the tanker what was in the tanker and at what  
3 concentration.

4 (j) On January 6, 2005, two freight trains collided in  
5 Graniteville, South Carolina, approximately 10 miles northeast of  
6 Augusta, Georgia, releasing an estimated 11,500 gallons of  
7 chlorine gas, which caused nine deaths and sent at least 529  
8 persons seeking medical treatment for possible chlorine  
9 exposure.

10 (k) In June of 2004, a moving train struck a stationary train at  
11 a rail substation in Texas, causing a derailment. One tanker car  
12 was punctured, releasing approximately 90,000 pounds of  
13 chlorine gas. At least 60,000 pounds of chlorine *gas* reacted with  
14 sodium hydroxide to form sodium hypochlorite, a corrosive. Also  
15 released were approximately 78,000 gallons of urea fertilizer and  
16 7,000 gallons of diesel fuel, which when mixed form an  
17 explosive mixture. Forty-four persons were injured, including  
18 three who died.

19 (l) In August of 2002, approximately 16,900 pounds of  
20 chlorine gas were released from a railroad tanker car when a flex  
21 hose ruptured during unloading at a chemical plant in Missouri.  
22 An automatic shutoff valve on the car and an emergency shutoff  
23 system at the plant failed to work as backup prevention measures.  
24 Sixty-seven persons were injured.

25 (m) The Cantera Loop, five miles north of Dunsmuir,  
26 California, was the site of a tragic derailment and toxic chemical  
27 spill in 1991. That spill killed everything in the river for 40  
28 miles, including the wild trout population. The spill was  
29 contained just before it reached Shasta Lake, 43 miles to the  
30 south, a major drinking water supply for much of the state. In  
31 addition to the destruction to the environment, the tourism  
32 dependent economy of the Sacramento River Canyon was  
33 devastated. Businesses in Dunsmuir closed and real estate value  
34 in Dunsmuir plummeted. Dunsmuir almost became a ghost town.  
35 Recovery of the fishery took 10 years and Dunsmuir is just  
36 showing signs of becoming a tourist destination.

37 (n) Again in July of 2003, an 86-car Union Pacific freight train  
38 derailed three miles north of Dunsmuir. Fifteen cars jumped the  
39 track and a few ended up in the Sacramento River. At the time of  
40 the derailment, the cars in the river were empty.

(o) On January 15, 2005, the Centers for Disease Control and Prevention issued a report on the South Carolina accident recommending that government officials and private companies “route hazardous materials away from densely populated areas, where feasible” to reduce risks.

(p) The federal government considers these ultrahazardous cargoes as “potential weapons of mass destruction,” and very attractive targets for terrorists. A study by the Naval Research Laboratory reveals that 100 people per second could die if a terrorist were to blow up a tank car full of chlorine *gas*.

(q) Despite Federal Bureau of Investigation warnings indicating that our nation’s railroads could be likely targets for terrorism, the federal government has left rail security up to private industry, which has not been willing to spend the money necessary to secure the railroads.

(r) The railroad corporations, left to their own initiatives, have implemented potentially dangerous cost-cutting measures that have taken trained professionals off of locomotives, created a fatigue crisis among rail workers, and inadequately ~~address~~ *addressed* infrastructure maintenance, rail yard access, and other matters of concern to rail workers and the public.

(s) Since September 11, 2001, the federal government has taken swift action to standardize and heighten security measures throughout our nation’s airports and airlines, but have left our nation’s railroads virtually untouched.

(t) A 2003 Government Accounting Office report concluded that it is unclear whether or not the railroad companies’ own initiatives have effectively deterred terrorism because there are no federal standards.

25546.1. For the purposes of this chapter, the following terms have the following meanings:

(a) “Emergency” means an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the Office of Emergency Services.

(b) “Federal act” means the Hazardous Materials Transportation Authorization Act of 1994 (Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code), as amended.

~~(c) “Federal regulations” means Title 49 of the Code of Federal Regulations.~~

1     ~~(d)~~

2     (c) “First responder” means a local agency that provides  
3 emergency response, first aid care, or other medically related  
4 assistance in response to an emergency.

5     ~~(e)~~

6     (d) “Office” means the Office of Emergency Services.

7     ~~(f)~~

8     (e) “Practical alternative route” means any route that lies  
9 entirely outside the urban exclusion corridor and whose use  
10 would not increase the cost of shipping ultrahazardous materials  
11 by 25 percent or more as compared to existing shipping costs.

12     ~~(g)~~

13     (f) “Ultrahazardous material” means those materials identified  
14 in Sections 173.2, 173.116, and 173.133 of ~~the federal~~  
15 ~~regulations~~ *Title 49 of the Code of Federal Regulations*.

16     ~~(h)~~

17     (g) “Urban exclusion corridor” means three miles from any  
18 city hall in an urban region or the state capitol.

19     ~~(i)~~

20     (h) “Urban region” means either of the following:

21     (1) The central portion of a city or a group of contiguous cities  
22 with a population of 50,000 or more, together with adjacent  
23 densely populated areas having a population density of at least  
24 1,000 persons per square mile.

25     (2) A central city or cities and surrounding closely settled  
26 territory, as defined by the United States Department of  
27 Commerce Bureau of the Census in the Federal Register, Volume  
28 39, Number 85, for Wednesday, May 1, 1974, at pages 15202  
29 and 15203, and as periodically updated.

30     25546.2. (a) Except as provided in subdivision (b), the office  
31 shall adopt regulations to prohibit a person from transporting an  
32 ultrahazardous material on the highways of this state, or  
33 delivering to a railroad, vehicle transport facility, or vessel an  
34 ultrahazardous material for transport, if that ultrahazardous  
35 material enters the state or is transported within the state; in a  
36 pressurized railroad tank car manufactured before January 1,  
37 1989.

38     (b) The office shall exempt from the regulations adopted  
39 pursuant to subdivision (a) an ultrahazardous material that enters  
40 the state or is transported within the state in a pressurized railroad

1 tank car that was manufactured before January 1, 1989, and is  
2 retrofitted with the best available safety technology, as  
3 determined by the office.

4 (c) Except as provided in subdivision (d), in adopting  
5 regulations pursuant to this section, the office shall ensure that  
6 the regulations are consistent with the federal act.

7 (d) If the office determines that a requirement imposed  
8 pursuant to this section could be preempted by the federal act, the  
9 office shall apply to the Secretary of Transportation for a waiver  
10 of preemption pursuant to subsection (e) of Section 5125 of Title  
11 49 of the United States Code.

12 25546.3. Except as provided in Section ~~25546.1.3~~, 25546.4,  
13 it is unlawful for a person to transport, by rail, through an urban  
14 exclusion corridor in the state, any of the following:

15 (a) Explosives of class 1, division 1.1, or class 1, division 1.2,  
16 as designated in Section 173.2 of ~~the federal regulations~~ *Title 49*  
17 *of the Code of Federal Regulations*, in a quantity greater than  
18 500 kilograms.

19 (b) Flammable gases of class 2, division 2.1, as designated in  
20 Section 173.2 of ~~the federal regulations~~ *Title 49 of the Code of*  
21 *Federal Regulations*, in a quantity greater than 10,000 liters.

22 (c) Poisonous gases of class 2, division 2.3, as designated by  
23 Section 173.2 of ~~the federal regulations~~ *Title 49 of the Code of*  
24 *Federal Regulations* and belonging to hazardous zone A or B as  
25 defined in Section 173.116 of ~~the federal regulations~~ *Title 49 of*  
26 *the Code of Federal Regulations*, in a quantity greater than 500  
27 liters.

28 (d) Poisonous material, other than gases, of class 6, division  
29 6.1, or class 1, division 1.2, as designated by Section 173.2 of ~~the~~  
30 ~~federal regulations~~ *Title 49 of the Code of Federal Regulations*  
31 and belonging to hazardous zone A or B as defined in Section  
32 173.133 of ~~the federal regulations~~, ~~in~~ *Title 49 of the Code of*  
33 *Federal Regulations*, in a quantity greater than 1,000 kilograms.

34 25546.4. (a) Notwithstanding the prohibition of Section  
35 25546.3, the office may issue a permit authorizing the  
36 transportation of ultrahazardous materials into and through an  
37 urban exclusion corridor under any of the following  
38 circumstances:

1 (1) The ultrahazardous materials are transported in containers  
2 that are certified by the office as meeting the highest standards of  
3 public safety utilizing the best available control technology.

4 (2) The transporter demonstrates that there is no practical  
5 alternative route or means of transport.

6 (b) The office may issue to a transporter an emergency permit  
7 authorizing the transport of ultrahazardous materials through an  
8 urban exclusion corridor. The office shall adopt regulations  
9 establishing criteria for issuing an emergency permit.

10 (c) The office shall adopt regulations establishing, and  
11 annually update, and post on its Internet Web site, a list of  
12 containers that meet the standards prescribed in paragraph (1) of  
13 subdivision (a).

14 (d) The office may require the adoption of safety measures,  
15 including, but not limited to, time-of-day restriction, as  
16 conditions of the permit issued.

17 (e) Within 24 hours of the issuance of a permit, the office shall  
18 provide a copy of the permit to the unified program agency with  
19 jurisdiction over areas through which the ultrahazardous material  
20 will pass. If there is no unified program agency in a jurisdiction,  
21 the office shall provide a copy of the permit to the first responder  
22 in that jurisdiction.

23 (f) The office may collect a permit fee from the transporter of  
24 ultrahazardous material to cover the cost of implementing and  
25 enforcing this chapter.

26 25546.5. (a) A person who violates the requirements of this  
27 article or the implementing regulations shall be subject to a civil  
28 penalty not to exceed:

29 (1) Ten thousand dollars (\$10,000) for the first offense.

30 (2) Twenty-five thousand dollars (\$25,000) for a subsequent  
31 offense.

32 (b) Notwithstanding the requirements of subdivision (b) of  
33 Section 25515.2, the civil penalties assessed and collected under  
34 subdivision (a) shall be deposited into the Environmental  
35 Enforcement and Training Account, and shall be available for  
36 expenditure pursuant to Title 13 (commencing with Section  
37 14300) of the Penal Code.

38 SEC. 2. The provisions of this act are severable. If any  
39 provision of this act or its application is held invalid, that



1   invalidity shall not affect other provisions or applications that can  
2   be given effect without the invalid provision or application.

3       *SEC. 3. No reimbursement is required by this act pursuant to*  
4   *Section 6 of Article XIII B of the California Constitution because*  
5   *the only costs that may be incurred by a local agency or school*  
6   *district will be incurred because this act creates a new crime or*  
7   *infraction, eliminates a crime or infraction, or changes the*  
8   *penalty for a crime or infraction, within the meaning of Section*  
9   *17556 of the Government Code, or changes the definition of a*  
10   *crime within the meaning of Section 6 of Article XIII B of the*  
11   *California Constitution.*